

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

NESTOR HERNANDEZ,

Petitioner,

vs.

No. CV 20-00035 KG/JHR

ANDREA REEB, et al.,

Respondents.

ORDER DENYING APPLICATION TO PROCEED IN DISTRICT COURT  
WITHOUT PREPAYING FEES OR COSTS

THIS MATTER is before the Court under 28 U.S.C. § 1915(b) on the Application to Proceed in District Court Without Prepaying Fees or Costs filed by Petitioner Nestor Hernandez on January 13, 2020. (Doc. 2). The Court will deny the Application to Proceed in District Court Without Prepaying Fees or Costs and order Petitioner to pay the full \$5 filing fee within thirty (30) days of entry of this Order.

This is a habeas corpus proceeding under 28 U.S.C. § 2254. The filing fee for a § 2254 proceeding is \$5. Petitioner did not pay the \$5 filing fee but, instead, filed his Application to Proceed in District Court Without Prepaying Fees or Costs. The Court has conducted the analysis of the inmate account submitted by Petitioner under § 1915(b)(1) (Doc. 2 at 4-5) and has determined that the deposits to Petitioner's inmate account in the six months preceding filing of this action total \$1,150.00. The average monthly deposits to the account over the six-month period equal \$191.67. Twenty percent of the average deposits is \$38.33, an amount that exceeds the \$5 filing fee for commencement of the action. The inmate account statement also discloses that, at the time he instituted this proceeding, the balance in his account was \$88.56, and the

average balance in his account during the six months preceding the filing was \$54.94. (Doc. 2 at 4-5). The inmate account statement demonstrates that Petitioner has the financial ability to prepay the \$5 fee for this action. *See* 28 U.S.C. § 1915(b)(3). The Court will therefore deny Petitioner leave to proceed pursuant to § 1915 and will order Petitioner to pay the full \$5 filing fee. If Petitioner does not pay the \$5 filing fee within the thirty-day time period, the Court may dismiss this proceeding without further notice.

IT IS ORDERED that the Application to Proceed in District Court Without Prepaying Fees or Costs filed by Petitioner Nestor Hernandez (Doc. 2) is DENIED; and

IT IS FURTHER ORDERED that Petitioner Nestor Hernandez pay the full \$5 filing fee within thirty (30) days of entry of this Order.

A handwritten signature in black ink, appearing to read "Leonard J. Gonzalez", is written over a horizontal line.

UNITED STATES DISTRICT JUDGE